

FILED

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EL CAMPO VENTURES, LLC,

Plaintiff,

v.

STRATTON SECURITIES, INC., et al.,

Defendants.

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1:20-CV-560-RP

JURY CHARGE

MEMBERS OF THE JURY:

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

I. INSTRUCTIONS FOR THE JURY

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in

light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict.

INSTRUCTION NO. 1

BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

Plaintiff El Campo Ventures, LLC has the burden of proving its case by a preponderance of the evidence. To establish by a preponderance of the evidence means to prove something is more likely so than not so. If you find that El Campo Ventures, LLC has failed to prove any element of its claim by a preponderance of the evidence, then it may not recover on that claim.

INSTRUCTION NO. 2

EVIDENCE

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general

rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

Additionally, I remind you that anything you may have seen or heard during this trial other than testimony from witnesses and exhibits admitted into evidence should be disregarded.

INSTRUCTION NO. 3

WITNESSES

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial. A simple mistake by a witness does not

necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

Certain testimony has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. Under some circumstances, a witness's testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers have been shown to you. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility and weighed and otherwise considered by you in the same way as if the witness had testified from the witness stand in court.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

INSTRUCTION NO. 4

LAWSUIT

The fact that a person brought a lawsuit and is in court seeking damages creates no inference that the person is entitled to a judgment. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

INSTRUCTION NO. 5

AGREEMENT

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

INSTRUCTION NO. 6

COMPLIANCE

A failure to comply with an agreement must be material. The circumstances to consider in determining whether a failure to comply is material include:

- (a) the extent to which the injured party will be deprived of the benefit which it reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which it will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure its failure, taking account of the circumstances including any reasonable assurances; and
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

INSTRUCTION NO. 7

WAIVER

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

INSTRUCTION NO. 8

CONVERSION

Property is converted if (1) the plaintiff owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the

plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property.

INSTRUCTION NO. 9

INTENT

To determine the intent of the parties at the time of the agreement, consider all the facts and circumstances surrounding the making of the agreement, the interpretation placed on the agreement by the parties, and the conduct of the parties.

INSTRUCTION NO. 10

CLEAR AND CONVINCING EVIDENCE

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

INSTRUCTION NO. 11

MALICE

"Malice" means a specific intent by any of the Defendants to cause substantial injury or harm to Plaintiff El Campo Ventures, LLC.

INSTRUCTION NO. 12

FRAUD

"Fraud" occurs when:

1. a party fails to disclose a material fact within the knowledge of that party,
2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,
3. the party intends to induce the other party to take some action by failing to disclose the fact, and

4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

INSTRUCTION NO. 13

EXEMPLARY DAMAGES

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

The purpose of punitive damages is to punish and deter, not to compensate. Punitive damages serve to punish a defendant for malicious or reckless conduct and, by doing so, to deter others from engaging in similar conduct in the future. You are not required to award punitive damages. If you do decide to award punitive damages, you must use sound reason in setting the amount. Your award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. It should be presumed that Plaintiff El Campo Ventures, LLC has been made whole by compensatory damages, so punitive damages should be awarded only if Defendants’ misconduct is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the Defendant.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of the Defendant.

II. STIPULATIONS

A “stipulation” is an agreement. When there is no dispute about certain facts, the attorneys may agree or “stipulate” to those facts. You must accept a stipulated fact as evidence and treat that fact as having been proven here in court.

The parties have stipulated to the facts listed below:

1. Plaintiff El Campo Ventures, LLC is a Texas limited liability company.
2. The two members of El Campo Ventures, LLC are Gattis, LLC, a Texas limited liability company, and Ninety North Holdings, LP, a Texas limited partnership.
3. The sole member of Gattis, LLC is Dan Gattis.
4. Dan Gattis is a Manager of Plaintiff El Campo Ventures, LLC.
5. Dan Gattis is a citizen of Texas.
6. The sole general partner of Ninety North Holdings, LP is Ninety North Holdings, LLC, a Texas limited liability company.
7. Rae Powell is a member of Ninety North Holdings, LLC.
8. Rae Powell is a limited partner of Ninety North Holdings, LP.
9. Rae Powell is a Manager of Plaintiff El Campo Ventures, LLC.
10. Rae Powell is a citizen of Texas.
11. Defendant Daniel Stratton is a citizen of South Carolina.
12. Defendant Shannon Stratton is a citizen of South Carolina.
13. Defendant Stratton Securities, Inc. is a corporation incorporated under the laws of South Carolina and has its principal place of business in South Carolina.
14. Defendant Stratton Oilfield Systems Texas, LLC is a limited liability company organized under the laws of South Carolina.
15. No member(s) of Stratton Oilfield Systems Texas, LLC are citizens of Texas.
16. Defendant Daniel Stratton is President of Stratton Securities, Inc.
17. Defendant Shannon Stratton is Vice President of Stratton Securities, Inc.
18. Defendant Stratton Securities, Inc. owns The Studios at Carrizo Springs.

19. Plaintiff El Campo Ventures, LLC and Defendant Stratton Securities, Inc. entered into a contract dated May 2, 2019.
20. On May 14, 2019, Shannon Stratton texted Dan Gattis and Rae Powell indicating that "should they wish to lease, SSI will pay El Campo directly as if it were a sale."
21. On May 15, 2019, Defendant Stratton Securities, Inc. submitted a lease proposal to Alfred Cypress for The Studios at Carrizo Springs.
22. On May 16, 2019, Defendant Stratton Securities, Inc. submitted a purchase proposal to Alfred Cypress for The Studios at Carrizo Springs.
23. On May 17, 2019, Defendant Stratton Securities, Inc. submitted a lease proposal to Pat Rice for The Studios at Carrizo Springs.
24. On June 6, 2019, Defendant Stratton Securities, Inc. entered into a lease with the U.S. Government for The Studios at Carrizo Springs.
25. On July 16, 2019, Defendant Stratton Securities, Inc. sent Plaintiff El Campo Ventures, LLC a copy of the executed lease with the U.S. Government.
26. On July 24, 2019, Sunflower Bank, N.A. loaned Defendant Stratton Securities, Inc. \$6,430,600.00, which loan was secured by an assignment of 100% of the rental proceeds due during the 3-year term of the lease with the U.S. Government.

III. DUTY TO DELIBERATE

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a jury foreperson to guide you in your deliberations and to speak for you here in the courtroom.

Your verdict must be unanimous. After you have reached a unanimous verdict, your jury foreperson must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case.

If you need to communicate with me during your deliberations, the jury foreperson should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

You may now proceed to the jury room to begin your deliberations.

SIGNED this 9th day of SEPTEMBER, 2021.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE